

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALLEN M. JONES,

Defendant.

4:12CR3032

FINDINGS AND RECOMENDATION

The defendant asked that his motion to suppress, (Filing No. 24), be re-opened to receive evidence from a witness who was not contacted prior to the suppression hearing held on August 21, 2012. The request was granted.

During the supplemental suppression hearing held today, the defendant offered the testimony of Jamie Burnett. The defendant was arrested during a traffic stop, and Ms. Burnett was the driver of the vehicle at the time of the stop.

After listening to Ms. Burnett's testimony, the undersigned magistrate judge noted several inconsistencies within her testimony, and between her testimony and the video recording of the traffic stop. Ms. Burnett's mannerisms while testifying indicated she was embellishing her description of the events occurring during the stop, and she acknowledged that she was afraid when, at the time of the stop, the defendant yelled profanities at her and called her a snitch. Ms. Burnett was first contacted about attending the supplemental suppression hearing when she received a letter from the defendant's girlfriend two weeks ago. The undersigned magistrate judge finds Ms. Burnett's testimony was not credible, and her testimony does not provide any basis for reconsidering the prior ruling denying defendant's motion to suppress.

Moreover, even if believed, Ms. Burnett's testimony: 1) indicates she consented to the search of the vehicle after being told she could be held responsible for anything found within the vehicle, and 2) supports the court's prior ruling that the defendant lacks standing to challenge the vehicle search.

Accordingly,

IT IS RECOMMENDED to the Honorable John M. Gerrard, United States District Judge, pursuant to [28 U.S.C. § 636\(b\)](#), that the defendant's motion to suppress, (filing no. 24, be denied in its entirety.

The parties are notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

October 22, 2012.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge